



ICRC

independent competition and regulatory commission

Energy Industry Levy **Guidance note**

September 2019

The Independent Competition and Regulatory Commission (Commission)¹ is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.

The Commission has responsibilities for a broad range of regulatory and utility administrative matters. The Commission has responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. The Commission also has responsibility for arbitrating infrastructure access disputes under the ICRC Act. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

The Commission's objectives are set out in section 7 of the ICRC Act and section 3 of the *Utilities Act 2000* (Utilities Act).

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If English is not your first language and you require the translating and interpreting service, please call the Telephone Interpreter Service on 131 450. If you are deaf or hearing impaired and require assistance, please call the National Relay Service on 133 677 or 0423677767 for SMS relay.

¹ In this report, a reference to 'Independent Competition and Regulatory Commission', 'ICRC', or 'Commission' is to the Independent Competition and Regulatory Commission ABN 88 647 913 351.

1 What is the Energy Industry Levy?

The Energy Industry Levy (levy) is a levy collected from energy sector utilities that provide an energy utility service (electricity distribution, gas distribution, electricity supply or gas supply) in the Australian Capital Territory at any time during the levy year (1 July to 30 June).

The requirement and liability of energy utilities to pay a levy is set out under Part 3A of the *Utilities Act 2000* (Utilities Act).

2 What is the purpose of the energy industry levy?

The purpose of the levy is to recover the cost to the ACT Government (Territory) of regulating each energy industry sector. The levy recovers costs incurred and expected to be incurred by regulators and national bodies as they undertake their regulatory functions for each energy industry sector.

3 Which energy utilities are required to pay the levy?

Energy utilities operating in the following energy industry sectors are required to pay the levy:

- electricity distribution;
- electricity supply;
- gas distribution; and
- gas supply.

3.1 Which utilities are not required to pay the levy?

Gas and electricity transmission are not energy industry sectors for the purposes of the levy. Regulatory costs associated with gas and electricity transmission are recovered through the annual utility licence fee framework (Division 3.4 of the Utilities Act).

The following utilities are not subject to the levy:

- utilities that are exempt under the *Utilities Act 2000*;
- licensed utilities paying a licence fee;

- electricity transmission and generation utilities;
- gas transmission utilities; and
- unlicensed regulated utilities under Part 6 of the *Utilities (Technical Regulation) Act 2014*.

4 Energy utility obligations in relation to the levy

Utilities Act reference	Requirement	By when
54L	<p><u>Registration with ACT Revenue</u></p> <p>An energy utility must register with the Commissioner for Revenue (ACT Revenue Office).</p> <p>To register, please visit https://www.revenue.act.gov.au/levies/energy-industry-levy</p> <p>Note: Failure to register may attract a penalty of up to 50 penalty units for a corporation.</p>	Within 90 days of commencing energy supply or distribution in the ACT
54I	<p><u>Production of distribution & sales information</u></p> <p>If an energy utility provided an energy utility service at any time before 30 August in the levy year, or the previous levy year, the utility must lodge a statement with the Levy Administrator detailing:</p> <ol style="list-style-type: none"> (1) its actual distribution or supply volume information in respect of the previous levy year; and (2) the way the energy utility calculated its total supply figure. <p>Note comments under 54M below, where under DI2019-76², a utility, in submitting information under 54I, will be taken to have submitted its return figure under 54M.</p>	By 30 August
54M	<p><u>Returns under Taxation Administration Act</u></p>	By 31 October

² <https://www.legislation.act.gov.au/di/2019-76/>

	<p>Under 54M of the Utilities Act, an energy utility must lodge a return by 31 October of the levy year if the utility provided an energy utility service in the ACT at any time before 1 October of the levy year, or the previous year.</p> <p>To minimise the requirement for a utility to report twice (to the Levy Administrator in August (s54I) and ACT Revenue Office in October (s54M)), the Commissioner for ACT Revenue passed a special arrangement instrument in 2018–19 relating to processing of energy industry levy returns (DI2019-76). The instrument sets out that a utility will be taken to have complied with the requirement in section 54M if the energy utility has already lodged a statement for that same levy year with the Levy Administrator in accordance with the requirements of section 54I of the Act³.</p> <p>The Levy Administrator, as a tax officer under the <i>Tax Administration Act 1999</i>, provides the supply figure to the ACT Revenue Office for the purpose of processing the relevant levy figure and invoice to the energy utility. This process means that energy utilities that are required to lodge a return under section 54M of the Utilities Act will have complied with that requirement by lodging a statement for the relevant levy year with the Levy Administrator.</p>	
	<p><u>Payment of levy</u></p> <p>Upon completion of the levy administration process, the energy utility is liable to pay its levy as notified by the ACT Revenue Office. Typically, notification of the levy payable by each energy utility is provided around October/ November in the levy year.</p>	<p>As notified on the return</p>

For more detailed information, please refer to Part 3A of the Utilities Act.

³ Explanatory statement. Taxation Administration (Special Arrangements–Energy Industry Levy Returns and Payment) Approval 2019 Disallowable Instrument DI2019–79

5 How is the levy calculated?

Section 54C of the Utilities Act sets out the formula for the levy calculation as shown below:

$$B + EV + (AV - EV_{-1})$$

Where:

AV means the actual variable amount for the energy utility for the previous levy year.

B is the base amount for the levy year determined under section 54GA(2)

EV means the estimated variable amount for the energy utility for the levy year.

EV₋₁ means the estimated variable amount for the energy utility for the previous levy year.

In general terms, the levy is calculated by determining the total and anticipated cost of regulation in each energy industry sector each year. The formula looks at both historical (actual) and future (estimated) regulatory costs. Individual energy utilities are required to pay a levy based upon their market share of energy sold or distributed in the energy sector. The formula includes a 'true-up' mechanism, which assesses the estimated costs determined in the previous levy year, against the actual costs, with adjustments made for any over- or under- recovery.

Regulatory costs consist of both local and national regulatory costs to the Territory. Local regulatory costs currently include functions performed under the Utilities Act and *Utilities (Technical Regulation) Act 2014* of:

- the ACT Civil & Administrative Tribunal (the ACAT),
- the Independent Competition and Regulatory Commission (Commission); and
- the Utilities Technical Regulator (UTR).

The national regulatory cost is the cost to the Territory of meeting its national regulatory obligations under the Australian Energy Market Agreement (AEMA) in relation to the Australian Energy Market Commission (AEMC) and the Council of Australian Governments Energy Council (COAG EC) on responsibilities under the AEMA.

5.1 What data is used to make levy determinations?

The Levy Administrator gathers data from several sources each levy year to make the required determinations. The Levy Administrator produces an Annual Statement about the data relied upon for the levy determinations each year. A copy of the statement is published on the Commission's website at:
<https://www.icrc.act.gov.au/utilities-licensing/licence-fees-and-the-energy-industry-levy>

6 Administrative practices of the Levy Administrator

In making energy industry determinations, the Levy Administrator has adopted the following administrative practices.

6.1 Gathering information from utilities

The Levy Administrator has adopted a proactive position in seeking the required information from energy industry utilities. To support this position the Levy Administrator:

- seeks market participant information from the Australian Energy Regulator;
- contacts new market entrants (when known) to ensure they are aware of the energy industry levy requirements under the Utilities Act;
- sends a letter to energy industry utilities requesting required information and outlining obligations under Part 3A of the Utilities Act in early July; and
- sends reminder notices before figures are due.

Once information is received, the Levy Administrator compares the supply figures to previous years and will seek confirmation or clarification if required.

6.2 Gathering information from regulatory bodies

The Levy Administrator seeks information from, and assesses the costs incurred and expected to be incurred by regulators in each energy sector. Information is provided to the Levy Administrator outlining:

- actual and estimated workload against each energy industry sector;
- information on costs associated with recoverable regulatory activities; and
- explanations for any variations in the costs estimated and actual costs incurred.

In assessing and determining local and national costs, the Levy Administrator follows the requirements under the Utilities Act, including consideration of:

- the budget, or draft budget for regulatory activities for year;
- the costs incurred in the previous year for regulatory activities;

and apportions the costs between energy industry sectors having regard to the costs attributable to each sector.

6.3 Determinations made by the Levy Administrator

After receiving the above information, the Levy Administrator reviews and assesses the material provided. The Levy Administrator must make the following determinations under the Utilities Act:

- The estimated national regulatory cost to be applied to each energy industry sector for the current levy year, and the actual national regulatory cost to be applied to each energy industry sector for the previous levy year (Section 54E).
- The estimated local regulatory cost to be applied to each energy industry sector for the current levy year, and the actual local regulatory cost to be applied to each energy industry sector for the previous levy year (Section 54F).
- The estimated net regulatory cost to be applied to each energy sector for the levy year, and the actual net regulatory cost to be applied to each energy sector for the previous levy year. The net regulatory cost is the total combined national and local regulatory cost, less any annual licence fees determined in the energy sector (Section 54GA).
- For the levy year, the number of energy utilities that provided an energy utility service in each energy utility sector at any time before 30 August (Section 54H).
- For the previous levy year, the number of energy utilities that provided an energy utility service in each energy utility sector at any time during the year, the number of megawatt hours of electricity or megajoules of gas distributed or sold in the ACT by all energy utilities in each energy sector in the year (Section 54H).
- The base amount, or minimum cost of regulating 1 energy utility for the period of a year. This determination is made every 5 years (Section 54GA).

Annual determinations can be found on the ACT Legislation website, links are also provided on the Commission's website.

7 How are individual energy utility levies determined and who collects them?

Energy utilities are required by section 54M of the Utilities Act to submit an annual return with the ACT Revenue Office before 31 October. In 2018–19, the Commissioner for ACT Revenue passed a special arrangement relating to processing of energy industry levy returns (DI2019-76).⁴ The instrument sets out that a utility will be taken to have complied with the requirement to lodge a return for the levy year with the Commissioner for revenue if the energy utility has already lodged a statement for that same levy year with the Levy Administrator in accordance with the requirements of section 54I of the Act.

In accordance with DI2019–76, from the 2019–20 levy year, the Levy Administrator will provide the ACT Revenue Office with the total levy and individual energy utility levies that the Levy Administrator has determined, together with relevant data used in the determination, which includes the supply figures reported by each utility before 30 August 2019.

Energy utility levy invoices are issued by the ACT Revenue Office. The ACT Revenue Office will notify each utility of its required levy payment for 2019-20. The levy provisions are subject to ACT tax law under the *Taxation Administration Act 1999* and the payment of levies is made to the ACT Revenue Office.

Details of the energy industry levy as it relates to the ACT Revenue Office can be found at the following link: <https://www.revenue.act.gov.au/levies/energy-industry-levy>

8 Key dates for the levy are:

- By 30 August a utility must have lodged a statement with the Levy Administrator detailing its actual distribution or sales information in respect of the previous levy year.
- By 30 August the Utilities Technical Regulator, the ACAT and the Commission provide their estimated costs for the levy year and actual costs for the previous year to the Levy Administrator.
- By 1 October the Levy Administrator must determine local and national regulatory costs to be applied to each energy sector across all agencies in the ACT and also determine further information as set out under section 54H.
- On or about 1 October determined figures are provided to the ACT Revenue Office and the determinations are notified on the ACT Legislation website.

⁴ See above in section 4 for more detail.

- The ACT Revenue Office is responsible for administering payments and invoices to energy utilities. Typically, energy utilities will be notified in October or November of the levy payable.

If you have any queries about the Energy Industry Levy after reading this guidance note, please call the Commission on 02 6205 0799 or email us at icrc@icrc.act.gov.au. For levy payment queries after 1 October, please contact the ACT Revenue Office.